APPENDIX

CLAUSE 4.6 – HEIGHT OF BUILDINGS HEIGHT

Prepared October 2024

WRITTEN REQUEST PURSUANT TO CLAUSE 4.6 OF PITTWATER LOCAL ENVIRONMENTAL PLAN 2014

2131 PITTWATER ROAD, CHURCH POINT

FOR CONSTRUCTION OF ALTERATIONS AND ADDITIONS TO AN EXISTING DWELLING INCLUDING NEW SWIMMING POOL

VARIATION OF A DEVELOPMENT STANDARD REGARDING THE HEIGHT OF BUILDINGS CONTROL AS DETAILED IN CLAUSE 4.3 OF THE PITTWATER LOCAL ENVIRONMENTAL PLAN 2014

For: Proposed construction of alterations and additions to an existing dwelling including new swimming pool
At: 2131 Pittwater Road, Church Point
Owner: Brad & Louise Dowe
Applicant: Brad & Louise Dowe
C/- VMDC Planning

1.0 Introduction

This written request is made pursuant to the provisions of Clause 4.6 of Pittwater Local Environmental Plan 2014. In this regard it is requested Council support a variation with respect to compliance with the maximum building height as described in Clause 4.3 of the Pittwater Local Environmental Plan 2014 (PLEP 2014).

This submission has been prepared to address the provisions within Section 35B of the Environmental Planning and Assessment Regulation 2021, and as discussed within this Written Request, will demonstrate the grounds on which the proposal considers the matters set out in Clause 4.6(3)(a) and (b) of the PLEP 2014.

2.0 Background

The site is mapped within the C4 Environmental Living as per the Pittwater Local Environment Plan 2014 (see Figure 1 over).

Clause 4.3 restricts the building height of a building within this area of the Pittwater locality and refers to the maximum height noted within the "*Height of Buildings Map*."

The proposal includes the construction of alterations and additions to the existing dwelling which presents a non-compliant building height over the required 8.5 metres building height standard (see Figure 2).

The proposed works are located appropriately upon the land in terms of its topographical features noting the steep slope of the land and the siting of the existing dwelling which constrains the location of the new works. The substantial majority of the development readily complies with the building

height control, with the proposed parapet presenting a height of up to 8.9m which results in a minor non-compliance with the height standard of 400mm or 4.7%.

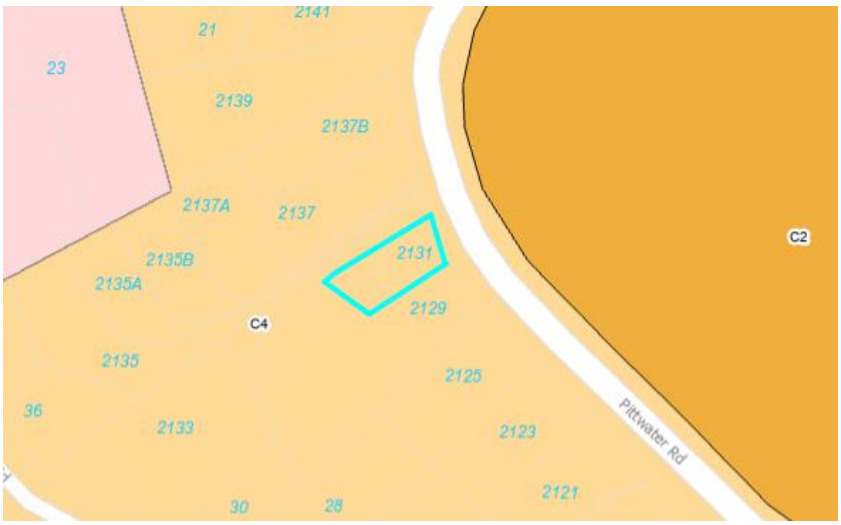


Figure 1: *Excerpt of the LEP Land Zoning Map*

The proposed additions respond to the physical and environmental constraints of the site, and does not give rise to any unacceptable ecological, scientific, or aesthetic impacts.

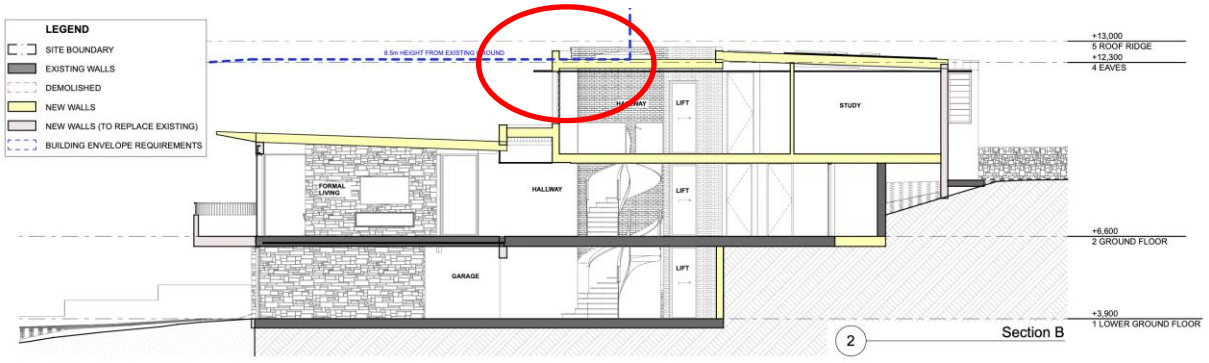


Figure 2*: Portion of non-compliant building height circled in red*

For the purposes of calculating the maximum building height, the existing excavated level within the site and in particular the excavated garage floor level has been determined in accordance with the principles identified in *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582 [at 73].

When the excavated garage level is used as the reference point for the 8.5m height control, the proposed additions and alterations present a non-compliance with the maximum building height standard, having a height of up to 8.9m.

When measured above the external ground levels and in particular the western elevation where the new skillion roof with parapet rises to its highest point, the visual height of the building does not exceed 8.5m when viewed from the north-west. From the east and south-west, the building presents as a stepped two storey height.

The extent of the breach of the building height control is directly related to the extent and form of the existing development and the slope of the land to the north-east towards the road verge along Pittwater Road.

As noted in *Merman* [at 74] the prior excavation of the site within the footprint of the existing building, which distorts the height of buildings development standard plane overlaid above the site when compared to the topography of the land, is considered to be an environmental planning grounds within the meaning of clause 4.6 (3)(b) of PLEP 2014.

The controls of Clause 4.3 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

Is Clause 4.3 of the LEP a development standard?

(a) The definition of "development standard" in clause 1.4 of the EP&A Act means standards fixed in respect of an aspect of a development and includes:

"(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,."

(b) Clause 4.3 relates to the maximum height of a building. Accordingly, Clause 4.3 is a development standard.

2.1 Authority to vary a Development Standard

In September 2023, the NSW Government published amendments to Clause 4.6 of the Standard Instrument which change the operation of the clause across all local environmental plans, including the Pittwater LEP. The changes came into force on 1 November 2023.

The principal change is the omission of subclauses 4.6(3)-(5) and (7) in the Standard Instrument Principal Local Environmental Plan.

The following changes have been made as a result of this:

• Clause 4.6(3) was amended such that the requirement to 'consider' a written request has been changed with an express requirement that the consent authority 'be satisfied that the applicant has demonstrated' that compliance with the development standard is unreasonable or unnecessary.

• Clause 4.6(4)(a)(ii) was amended such that the requirement that the consent authority must be satisfied that the proposed development in the public interest has been removed.

• Clause 4.6(4)(b) & 5 amended such that the requirement for concurrence from the Planning Secretary has been removed.

The objectives of clause 4.6 of the LEP, as amended, seek to recognise that in the particular circumstances of this case strict application of development standards may be unreasonable or unnecessary.

The clause provides objectives and a means by which a variation to the development standard can be achieved as outlined over:

Clause 4.6 Exception to development standard

(1) The objectives of this clause are as follows—

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

(a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and

(b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

Note—

The Environmental Planning and Assessment Regulation 2021 requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).

(4) The consent authority must keep a record of its assessment carried out under subclause (3).

(5) (Repealed)

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note—

When this Plan was made it did not include all of these zones.

(7) (Repealed)

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

(a) a development standard for complying development,
(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
(c) clause 5.4,
(caa) clause 5.5,
(ca) clause 4.3 in relation to land identified as "Area 1" on the Special Provisions Area Map, other than subject land within the meaning of clause 6.19C,
(cab) clause 4.4, 5.6 or 6.19C in relation to land identified as "Area 1" on the Special Provisions Area Map,
(cb) clause 6.3(2)(a) and (b),
(cba) clause 6.19A.
(cc) (Repealed)
(8A) (Repealed)

3.0 Purpose of Clause 4.6

The Pittwater Local Environmental Plan 2014 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the Standard Instrument should be assessed. These cases are taken into consideration in this request for variation.

In particular, the principles identified by Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council* [2018] NSWLEC 118 have been relied on in this request for a variation to the development standard.

4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and
(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

The decision of Chief Justice Preston in Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 ("Initial Action") provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in ***RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130 at [1], [4] & [51]*** where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant's written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

"In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard "achieve better outcomes for and from development". If objective (b) was the source of the Commissioner's test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test."

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.
Clause 4.6(2) of the LEP provides:

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Clause 4.3 (the Height of Buildings Control) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of the LEP.

Clause 4.6(3) of the LEP provides:

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The proposed development does not comply with the maximum building height control development standard pursuant to clause 4.3 of PLEP which specifies a maximum building height of 8.5m in this area of Church Point. The new dwelling will result in a maximum building height of 8.9m or exceed the height control by 400mm or 4.7%.

Strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation

Clause 4.6(6) relates to subdivision and is not relevant to the development.

Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.3 of MLEP from the operation of clause 4.6.

The specific objectives of Clause 4.6 are as follows:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and
(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

The development will achieve a better outcome in this instance as the site will provide additions and alterations to the existing dwelling, which is consistent with the stated Objectives of the C4 Environmental Living Zone, which are noted as:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To provide for residential development of a low density and scale integrated with the landform and landscape.*
- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

The proposed development will have appropriate impacts upon the locality as the proposed works are compatible with the nature and scale of other residential development within the immediate locality.

The proposed development respects the scale and form of other new development in the vicinity and therefore complements the locality. The proposal provides for the construction of alterations and additions to an existing dwelling which will not have any significant or adverse impact on the neighbouring properties.

In addition, the works are located logically on the site given the constraints of the property and existing development.

Notwithstanding the non-compliance with the maximum building height control, the proposed works will provide for increased residential amenity for occupants, while minimising the impacts for neighbouring properties.

5.0 The Nature and Extent of the Variation

5.1 This request seeks a variation to the maximum building height standard contained in Clause 4.3 of PLEP.

5.2 Clause 4.3 of PLEP specifies a maximum building height of 8.5m in this area of C4 Environmental Living area of Church Point.

5.3 The proposed new dwelling will provide for a maximum height of 8.9m, which exceeds Council's maximum building height by 400mm or 4.7% and therefore does not comply with this control.

As previously discussed, a major contributor to the breach of the height control is sloping topography of the site and siting of existing development through the previous excavation of the site resulting in a garage floor level which is below the external ground levels surrounding the dwelling. The proposal presents only a minor variation to the control, with the majority of the development readily meeting Council's height control.

As discussed in this submission, it is considered that the proposal is reasonable notwithstanding the breach the height control and this will be discussed further within this submission.

6.0 Relevant Caselaw

6.1 In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular, the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827* continue to apply as follows:

> *17. The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
>
> *18. A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
>
> *19. A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
>
> *20. A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance*

with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].

21. A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.

22. These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

6.2 The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is Clause 4.3 of PLEP a development standard?

2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:

   (a) compliance is unreasonable or unnecessary; and

   (b) there are sufficient environmental planning grounds to justify contravening the development standard

3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of Clause 4.3 and the objectives for development for in the C4 zone?

7.0. Request for Variation

7.1 Is compliance with Clause 4.3 unreasonable or unnecessary?

(a) This request relies upon the 1st way identified by Preston CJ in Wehbe.

(b) The first way in Wehbe is to establish that the objectives of the standard are achieved.

(c) Each objective of the maximum building height standard, as outlined under Clause 4.3, and reasoning why compliance is unreasonable or unnecessary, is set out below:

(a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,

The proposed alterations and additions are of a modest scale that will be compatible in its building height, design and materiality with other development within the immediate setting. The dwelling largely complies with the building height control with the exception of the proposed parapet.

Based on the technical information accompanying this application, does not give rise to any unacceptable ecological, scientific, or aesthetic impacts.

Accordingly, the development is unlikely to create unacceptable impacts to the foreshore or waterway areas and will not detract from the scenic quality of the locality, maintaining an appropriate visual relationship with the surrounding built environment.

(b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,

The proposed building height is compatible with the works are located appropriately and logically sited upon the site in terms of the topography, with the height and scale compatible with the surrounding development. The development is considered appropriate and compatible within the locality and is therefore worthy of support.

(c) to minimise any overshadowing of neighbouring properties,

The proposal is accompanied by shadow diagrams that demonstrate that the proposed new works will not impact the existing solar access provision to the principal private open space or living areas of the adjacent properties.

The adjoining properties will maintain suitable solar access throughout the day in accordance with Council's provisions.

(d) to allow for the reasonable sharing of views,

It is acknowledged that there are existing view lines to the Pittwater waterway to the north and east of the site. However, the living areas and principle private recreational spaces of nearby dwellings are significantly elevated above the location of the subject dwelling, meaning it is not anticipated that the proposed works will impact neighbouring views or public vantage points.

Given that the works maintain a modest overall bulk and scale, views from the adjoining properties will be maintained and there will be no substantial change to the existing views enjoyed by the neighbouring properties.

(e) to encourage buildings that are designed to respond sensitively to the natural topography,

The proposed alterations and additions have been located and designed to avoid unnecessary altering of the existing topography and landscaping, and is therefore considered to suitable respond to the site's topography.

(f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

There are no adjacent heritage items in the site is not within a heritage conservation area.

The proposed works are not considered to adversely affect the natural coastal processes and coastal environmental values, nor Aboriginal Culture significance. Therefore, the proposal is assessed as satisfactory in relation to this consideration.

7.2 Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

> *23. As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
>
> *24. The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see* Four2Five Pty Ltd v Ashfield Council *[2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see* Four2Five Pty Ltd v Ashfield Council *[2015] NSWLEC 90 at [31].*

There are sufficient environmental planning grounds to justify contravening the development standard.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The non-compliance primarily arises as a result of historical excavation undertaken to provide for the lower floor level of the existing dwelling. In accordance with the findings of the NSW LEC in *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, the prior excavation of the site within the footprint of the existing building, which distorts the height of buildings development standard plane overlaid above the site when compared to the topography of the hill, can properly be described as an environmental planning ground within the meaning of cl 4.6(3)(b) of LEP 2014.

- The aspect of the development which is resulting in a breach the height control relates to a portion of the stairwell and lift area which is up to 8.9m in height however this is as a direct result of the previous historical excavation of the site and this element does not in itself result in any significant increase in bulk and scale of the development relative of the surrounding property and therefore promotes the orderly & economic use of the land (cl 1.3(c)).

- Similarly, the proposed development will provide for improved amenity through the inclusion of more functional floor space within a built form which is compatible with development in the surrounding area, which promotes the orderly and economic use of the land (cl 1.3(c)).

- The proposed new development is considered to promote good design and enhance the residential amenity of the building's occupants and the immediate area, which is consistent with the Objective 1.3 (g).

- The proposed development improves the amenity of the occupants of the subject site and respects surrounding properties by locating the development where it will not unreasonably obstruct views across the site and will maintain the views from the site (1.3(g)).

- Consistent with the findings of Commissioner Walsh in *Eather v Randwick City Council* [2021] NSW LEC 1075 and Commissioner Grey in *Petrovic v Randwick City Council* [2021] NSW LEC 1242, the particularly small departure from the actual numerical standard and absence of impacts consequential of the departure constitute environmental planning grounds, as it promotes the good design and amenity of the development in accordance with the objects of the EP&A Act.

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development.

These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the maximum building height control.

It is noted that in *Initial Action,* the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6

does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

7.3 Is the proposed development consistent with the objectives of Clause 4.3 and the objectives of the C4 Environmental Living Zone?

(a) Section 4.2 of this written request suggests the 1st test in Wehbe is made good by the development.

(b) Each of the objectives of the C4 Environmental Living Zone and the reasons why the proposed development is consistent with each objective is set out below.

I have had regard for the principles established by Preston CJ in *Nessdee Pty Limited v Orange City Council [2017] NSWLEC 158* where it was found at paragraph 18 that the first objective of the zone established the range of principal values to be considered in the zone.

Preston CJ also found that "*The second objective is declaratory: the limited range of development that is permitted without or with consent in the Land Use Table is taken to be development that does not have an adverse effect on the values, including the aesthetic values, of the area. That is to say, the limited range of development specified is not inherently incompatible with the objectives of the zone".*

In response to *Nessdee,* I have provided the following review of the zone objectives:

It is considered that notwithstanding the variation of to the building height control, the proposal which involves additions and alterations to the existing building will be consistent with the individual Objectives of the C4 Environmental Living Zone following reasons:

- ***To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.***

The proposal provides for alterations and additions to an existing dwelling which are largely contained within the existing footprint of the dwelling and have been designed to minimise adverse affects on the ecological and aesthetic values of the locality. Stormwater and sediment will be suitably managed, and the modest bulk and scale of the new works is considered appropriate within the foreshore locality.

- ***To ensure that residential development does not have an adverse effect on those values.***

As discussed above, the proposal minimises potential adverse effect on the locality.

- ***To provide for residential development of a low density and scale integrated with the landform and landscape.***

  The proposal presents a compatible form to newer development in the locality, which is commonly of a 2 to 3 storey scale.

  The proposal will be consistent with and complement the existing detached style single dwelling housing within the locality and as such, will not be a visually dominant element in the area. The development does not have any unreasonable amenity impacts on its adjoining neighbours.

  The external form of the development is stepped to follow the sloping topography of the site, with the works minimising changes to the landform.

  The proposal will not require the removal of any significant vegetation, and the available area of soft landscaping is increased as a results of the new works.

- ***To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.***

  As discussed, the proposal will not require the removal of any significant vegetation, and the available area of soft landscaping is increased as a results of the new works.

  Given the new works are largely within the existing building footprint, the development is not considered to detract from flora and fauna within the locality.

7.4 Has the Council considered the matters in clause 4.6(5) of PLEP?

(a) The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is particular to the site and this design is not readily transferrable to any other site in the immediate locality, wider region of the State and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment.

(b) As the proposed development complies with the objectives of the development standard and the objectives of the zone there is no significant public benefit in maintaining the development standard.

(c) there are no other matters required to be considered by the secretary before granting concurrence.

8.0 Conclusion

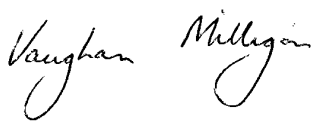
This development proposes a departure from the maximum height of a building control, with the proposed new works to provide a maximum overall height of 8.9m above existing ground level, representative of a 400mm or 4.7% variation to the maximum height control.

As discussed, the height breach can be largely attributed to the sloping topography of the site and location of the existing development and specifically in relation to the prior excavation of the site to provide for the garage level, which is generally below the external ground level surrounding the side and rear of the dwelling. The existing ground level within the site presents a constraint to designing for a new roof form which fully maintains the maximum building height control.

This written request to vary to the maximum building height standard specified in Clause 4.3 of the Pittwater LEP 2014 adequately demonstrates that that the objectives of the standard will be met.

The bulk and scale of the proposed development is appropriate for the site and locality.

Strict compliance with the maximum building height control would be unreasonable and unnecessary in the circumstances of this case.



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Town Planner